

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE COINSTAR, INC.
SECURITIES LITIGATION

Case No. C11-133 MJP

CSTR GROUP'S MOTION FOR
APPOINTMENT AS LEAD PLAINTIFF
AND APPROVAL OF ITS SELECTION
OF LEAD AND LIAISON COUNSEL

NOTE ON MOTION CALENDAR:
Friday, April 15, 2011

ORAL ARGUMENT REQUESTED

Chester County Employees Retirement Fund (“Chester County”), Mr. Jerry J. Knarr and Mrs. Cindy J. Knarr (collectively, the “CSTR Group”) respectfully move this Court pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-4(a)(3)(B), for an Order (1) appointing the CSTR Group as lead plaintiff; (2) approving the CSTR Group’s selection of Barroway Topaz Kessler Meltzer & Check, LLP (“Barroway Topaz”) as lead counsel and the Law Offices of Clifford A. Cantor, P.C. (“Cliff Cantor”) as liaison counsel; and (3) granting such other relief as the Court may deem just and proper. This motion is made on the grounds that the CSTR Group is the “most adequate plaintiff” under the PSLRA. *See* 15 U.S.C. §78u-4(a)(3)(B).

I. INTRODUCTION

The consolidated actions are brought on behalf of all persons who purchased securities issued by Coinstar, Inc. (“Coinstar” or the “Company”) between October 28, 2010 and February 3, 2011, inclusive (the “Class Period”).¹ The complaints in each of the consolidated actions similarly alleges that Coinstar and its officers violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”).

Pursuant to the PSLRA, the CSTR Group should be selected as lead plaintiff because, to the best of its knowledge, it has the largest interest in the relief sought by the class. *See Sabbagh v. Cell Therapeutics, Inc.*, 2010 U.S. Dist. LEXIS 93614, at *10 (W.D. Wash. 2010) (Pechman, J.); *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002). In addition, the CSTR Group satisfies the requirements of Rule 23 because its claims are typical and it will fairly and adequately represent the class’s interests. *See Cavanaugh*, 306 F.3d at 730; *see also* Declaration of Clifford Cantor in Support of CSTR Group’s Motion for Appointment as Lead Plaintiff and Approval of Its Selection of Lead and Liaison Counsel (“Cantor Decl.”), Exhibits (“Exs.”) A-C.

¹ The CSTR Group relies on the class period pleaded in *Wright v. Coinstar, Inc., et al.*, No. C11-325 MJP (W.D. Wash. filed Feb. 24, 2011) (asserting a class period between October 28, 2010 and February 3, 2011) to calculate its financial interest. *See Miller v. Dyadic Int’l, Inc.*, 2008 U.S. Dist. LEXIS 32271, at *11 (S.D. Fla. 2008). By Order docketed March 15, 2011, the Court consolidated a number of related actions against Coinstar and its officers, including *Wright*, into *In re Coinstar, Inc. Sec. Litig.*, No. C11-133 MJP. *See* Docket No. 25, ¶¶1-2.

1 Finally, in accordance with the PSLRA, the CSTR Group's selection of lead and liaison
 2 counsel should be approved. *See* 15 U.S.C. §78u-4(a)(3)(B)(v); *see also In re Cohen*, 586 F.3d
 3 703, 711 (9th Cir. 2009).

4 **II. FACTUAL BACKGROUND**

5 Coinstar owns and operates vending machines that deliver retail products and services to
 6 consumers via interactive self-service kiosks. The Company is known for its Redbox DVD
 7 rental kiosks and Coinstar coin-counting machines, which number approximately 30,000 and
 8 19,000 units nationwide, respectively. Coinstar is a Delaware corporation with its principal
 9 executive offices located in Bellevue, Washington.

10 Throughout the Class Period, defendants issued false and misleading statements about the
 11 Company's ability to maintain operational and revenue growth through its Redbox business
 12 based on its "efforts to provide [Redbox] customers with stronger [DVD] titles and increased
 13 availability of those titles." Additionally, defendants represented that the Company "continued
 14 to get better at predicting demand for these titles" and was "getting better and better around
 15 inventory management." In reality, the Company was experiencing significant difficulty with
 16 managing its inventory effectively and providing its customers with desirable content.

17 On January 13, 2011, the Company revealed that mounting problems within its
 18 operations would force it to reduce previously stated guidance – lowering fourth quarter 2010
 19 revenue expectations to \$391 million from a range of between \$415 million and \$440 million.
 20 This disclosure also reduced earnings per share guidance from between \$0.79 and \$0.85 to
 21 between \$0.65 and \$0.69 and reduced its full-year 2011 revenue outlook from between \$1.80
 22 billion and \$1.95 billion to between \$1.70 billion and \$1.85 billion. Following these disclosures,
 23 trading of Coinstar's stock was halted. When trading resumed the next day, Coinstar's stock fell
 24 \$15.45 per share, or approximately 27 percent, to close on January 14, 2011 at \$41.50 per share.

25 Additional bad news followed. On February 3, 2011, Coinstar issued a press release
 26 announcing its finalized fourth quarter and full-year 2010 financial results – which were in line
 27 with its January 13, 2011 guidance. Following the release of this news, shares of Coinstar's

1 stock fell an additional \$5.28 per share, or approximately 12 percent, to close on February 4,
2 2011 at \$38.96 per share.

3 **III. ARGUMENT**

4 **A. The PSLRA's Lead Plaintiff Provisions**

5 The PSLRA establishes the procedure for the appointment of a lead plaintiff in "each
6 private action arising under [the Exchange Act] that is brought as a plaintiff class action pursuant
7 to the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(1).

8 First, the plaintiff who files the initial action must publish a notice to the class within
9 twenty days, informing class members of their right to file a motion for appointment as lead
10 plaintiff. *See* 15 U.S.C. §78u-4(a)(3)(A)(i). Here, in connection with the filing of the first-filed
11 action, notice was published on *GlobeNewswire* on January 24, 2011. *See* Cantor Decl., Ex. D.

12 Second, within sixty days of the publication of notice, any person who is a member of the
13 proposed class may apply to be appointed as lead plaintiff, whether or not they have previously
14 filed a complaint in the action. *See* 15 U.S.C. §78u-4(a)(3)(A)(i)(II).

15 Third, the PSLRA provides that within ninety days after publication of notice, the court
16 shall consider any motion made by a class member and shall appoint as lead plaintiff the member
17 or members of the class that the court determines to be most capable of adequately representing
18 the interests of class members. *See* 15 U.S.C. §78u-4(a)(3)(B)(i). In determining the "most
19 adequate plaintiff," the PSLRA states that:

20 [T]he court shall adopt a presumption that the most adequate plaintiff in any
21 private action arising under this [Act] is the person or group of persons that –

22 (aa) has either filed the complaint or made a motion in response to a notice...;

23 (bb) in the determination of the court, has the largest financial interest in the
24 relief sought by the class; and

25 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of
26 Civil Procedure.

27 15 U.S.C. § 78u-4(a)(3)(B)(iii); *Cavanaugh*, 306 F.3d at 729-30.

1 The time period in which class members may move to be appointed lead plaintiff in this
 2 action expires on March 25, 2011. *See* 15 U.S.C. §78u-4(a)(3)(A)-(B). Pursuant to the
 3 PSLRA's provisions, and within the requisite time frame after publication of the required notice,
 4 the CSTR Group has timely moved this Court to be appointed lead plaintiff on behalf of all
 5 members of the class. *See Cell Therapeutics*, 2010 U.S. Dist. LEXIS 93614, at *9-*10.
 6 Accordingly, the CSTR Group satisfies the PSLRA's filing requirements and is entitled to have
 7 its application for appointment as lead plaintiff considered by the Court.

8 **B. The CSTR Group Is the "Most Adequate Plaintiff"**

9 **1. The CSTR Group Has the Largest Financial Interest in the Relief**
 10 **Sought by the Class**

11 The CSTR Group suffered losses of over \$160,000 in connection with its purchases of
 12 Coinstar securities during the Class Period. *See* Cantor Decl., Exs. B-C. To the best of its
 13 knowledge, this represents the largest known financial interest in the relief sought by the class of
 14 any movant properly before the Court. *See Cavanaugh*, 306 F.3d at 730-32; *Cell Therapeutics*,
 15 2010 U.S. Dist. LEXIS 93614, at *10.

16 **2. The CSTR Group Satisfies Rule 23**

17 In addition to possessing the largest financial interest, the lead plaintiff must also
 18 "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15
 19 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). While the PSLRA requires that a lead plaintiff meet the
 20 requirements of Rule 23(a), at this stage of the litigation only a preliminary showing is required
 21 with respect to typicality and adequacy. *See Schonfield v. Dendreon Corp.*, 2007 U.S. Dist.
 22 LEXIS 76816, at *10 (W.D. Wash. 2007) (Pechman, J.) (citing *Cavanaugh*, 306 F.3d at 730 n.5
 23 and 732). Consequently, in deciding motions for appointment of lead plaintiff, the Court should
 24 focus its inquiry to the typicality and adequacy prongs of Rule 23(a), and defer examination of
 25 the remaining requirements until the lead plaintiff moves for class certification. *See id.*

a. The CSTR Group's Claims Are Typical

Under Rule 23(a)(3), the claims or defenses of the representative party must be typical of those of the class. The test of typicality “is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The claims of the lead plaintiff, however, need not be identical to the claims of the class to satisfy typicality. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

Here, the CSTR Group's claims are typical because, just like all other class members, it: (1) purchased or acquired Coinstar securities during the Class Period in reliance upon the alleged materially false and misleading statements issued by defendants; and (2) suffered damages thereby. *See Hanon*, 976 F.2d at 508; Cantor Decl., Exs. B-C. Thus, the CSTR Group's claims are typical of those of other class members because its claims and the claims of other class members arise out of the same course of events. *See* 7 Herbert B. Newberg, *et al.*, NEWBERG ON CLASS ACTIONS § 22.24 (4th ed. 2002) (“[t]he majority of class action decisions support the view that when it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is met”).

b. The CSTR Group Is Adequate

Under Rule 23(a)(4), the representative party must “fairly and adequately protect the interests of the class.” The adequacy requirement is met when “(1) the proposed lead plaintiff's interests are in common with, and not antagonistic to, those of the class; and (2) proposed lead plaintiff's counsel are qualified, experienced and generally able to conduct the litigation.” *Dendreon*, 2007 U.S. Dist. LEXIS 76816, at *11. Here, the CSTR Group is adequate because its interests are aligned with the interests of the class, as both suffered losses when corrective events removed the artificial inflation from defendants' fraud from the price of Coinstar securities. Accordingly, both the CSTR Group and the class would benefit from the same relief.

1 Additionally, there is no evidence of antagonism between the CSTR Group and the class, and it
 2 has certified its willingness to serve as a representative of the class. *See* Cantor Decl., Ex. A.

3 The CSTR Group has executed a joint declaration attesting that it is committed to
 4 vigorously prosecuting this litigation and maximizing the recovery for the class. *See id.*; *Cell*
 5 *Therapeutics*, 2010 U.S. Dist. LEXIS 93614, at *17-*18. Moreover, as shown below, the CSTR
 6 Group has retained highly qualified, experienced counsel that are able to prosecute this complex
 7 litigation in a professional manner. Thus, for the purposes of this motion, the CSTR Group
 8 satisfies the typicality and adequacy requirements of Rule 23.

9 **IV. THE COURT SHOULD APPROVE THE CSTR GROUP'S CHOICE OF** 10 **COUNSEL**

11 The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject
 12 to the Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The Court should not disturb lead
 13 plaintiff's choice of counsel unless it is necessary to "protect the interests of the class." 15
 14 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); *see also Cavanaugh*, 306 F.3d at 734.

15 The CSTR Group has selected Barroway Topaz as lead counsel and Cliff Cantor as
 16 liaison counsel for the class. Both firms are actively engaged in complex litigation and have
 17 successfully prosecuted numerous securities fraud class actions on behalf of injured investors.
 18 *See* Cantor Decl., Exs. E-F; *In re Bank of Am. Corp. Sec., Derivative & ERISA Litig.*, 258 F.R.D.
 19 260, 271 (S.D.N.Y. 2009) (approving Barroway Topaz as lead counsel, finding it "highly
 20 experienced in prosecuting securities class actions"); *Foley v. Transocean Ltd.*, 2011 U.S. Dist.
 21 LEXIS 1541, at *30 (S.D.N.Y. 2011) (finding Barroway Topaz has "the experience and
 22 necessary resources available to litigate this [PSLRA] case"). Thus, the Court may be assured
 23 that in the event this Motion is granted, the members of the class will receive the highest caliber
 24 of legal representation available from Barroway Topaz and Cliff Cantor.

V. CONCLUSION

For the foregoing reasons, the CSTR Group respectfully requests that the Court: (1) appoint the CSTR Group as lead plaintiff; and (2) approve its selection of Barroway Topaz as lead counsel and Cliff Cantor as liaison counsel.

Dated: March 25, 2011

Respectfully submitted,

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Certificate of Service

I certify that on March 25, 2011, I electronically filed

- (i) the foregoing motion,
- (ii) the declaration of Clifford A. Cantor in support of CSTR Group's motion for appointment as lead plaintiff and approval of its selection of lead and liaison counsel (with six exhibits), and
- (iii) a [proposed] order appointing lead plaintiff and approving selection of lead and liaison counsel

with the Clerk of the Court using the CM/ECF system, which will send notification of filing to the CM/ECF participants listed below:

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